MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2015/2016

UDL3622 – LAND LAW II

(All Sections / Groups)

1 MARCH 2016
Reading Time : 2.30 p.m. – 2.45 p.m.
(15 Minutes)
Answering Time: 2.45 p.m. – 5.45 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in the question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 5 Questions only.

3. Attempt **FOUR** out of **FIVE** questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall a CLEAN and ORIGINAL copy of National Land Code 1965 (Act 56 of 1965).

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

Nelson, a Malaysian, is a registered proprietor of a double storey semi-detached house ('property') held under two titles, i.e. Geran No.167, Lot No.1012 and Geran Mukim No.168, Lot No.1013 respectively, both in Bandar Melaka, Daerah Melaka Tengah, Melaka. He had agreed to sell the property to Charles ('purchaser') at a sale price of RM580,000. The purchaser's solicitors had prepared the instrument in one single transfer in Form 14A in English for the parties' execution. As Nelson was residing in Taiwan, the Transfer Form was sent to Taiwan for Nelson's signature. Nelson affixed his name stamp on the Form 14A in the presence of Mr. Edison, a Notary Public. Mr. Edison, who attested Nelson's signature, had inserted the date in the Form 14A as 24 November 2015.

Mr. Edison also used a blue ballpoint pen to delete the word "Geran Mukim No.168" typed in the Schedule to the Form 14A, thinking that it was wrongly typed. He also inserted "Geran No.168" as replacement for the deletion.

On 1 February 2016, the purchaser's solicitors received a call from Nelson's wife, Fish that Nelson had passed away the night before. Fish, as the sole beneficiary of Nelson's estate, wished to cancel the sale and move back to Melaka. The purchaser's solicitors quickly presented the Transfer in Form 14A for registration at the Registry of Land Titles, Melaka on 5 February 2016. The Transfer in Form 14A was stamped at a nominal value of RM10.

Based on the above facts and the relevant provisions in the National Land Code 1965 and case law (if any), explain to Charles on the error(s) made in the transaction and whether rectification is possible to ensure that the instrument is fit for registration.

(Total: 25 marks)

Continued...

QUESTION 2

Edmond (husband) and Cecilia (wife) co-own a piece of 38-acre land, Lot 007 at Mukim Jasin, Melaka ('the land'). Cecilia has been away from the country to accompany their son who is pursuing his tertiary education in Australia since 2013. She entrusted her husband to take care of their properties, including the land. She did not empower Edmond to sell, transfer or charge the land.

Edmond was keen to start his own butterfly farm business on part of the land but he was short of funds. He approached SuperDan Bank Berhard ('SBB') for a loan and in June 2014 a third party charge was created on the land. With the solicitors' permission, he brought back the loan documents including the instrument of charge in Form 16A to be executed by his wife. In fact, he had executed it himself by forging his wife's signature. The charge was registered.

By April 2015, Edmond was unable to make ends meet and was unable to pay his instalment to SBB. As the loan fell into non-performing loan category, SBB transferred the charge to Asam Ganas Bank Berhad ('AGBB') in June 2015.

AGBB applied to the High Court for an Order for Sale after Edmond was unable to comply with the notice of default. The order was granted in mid-October 2015 and the public auction was to be held in early January 2016. Cecilia only discovered this whole episode after returning from Australia in January 2016.

Advise her as regards to her rights to recover the land in particular her half undivided share. Would her position be different if the land is now registered in the name of the purchaser in the public auction?

(Total: 25 marks)

Continued...

QUESTION 3

Datin Senah is the registered owner of a piece of commercial land held under H.S. (D) 2008, PT. No. 274, Daerah Petaling, Selangor ('the land'). She offered to sell the land to Datin Jenab for RM5 Million. Rejecting the offer, Datin Jenab however agreed to lend RM2 Million to Datin Senah. In December 2014, Datin Senah deposited the issue document of title ('IDT') of the land with Datin Jenab as a security for the loan advanced to her.

On 21 February 2015, Datin Senah offered to sell and transfer the land to Tan Sri Udin for RM6 Million. Tan Sri Udin without any hesitation agreed and paid her RM1 Million as a deposit for the purchase of the land and executed a sale and purchase agreement. Tan Sri Udin instructed his lawyers to enter a private caveat on the land which was entered on 25 February 2015.

In order to finance the purchase of the property, Tan Sri Udin applied for a loan from Bagus Bank Berhad ('BBB'). Subsequently, at the request of BBB's solicitors, Datin Jenab deposited the IDT with the solicitors for the purpose of creating a charge. A private search conducted by BBB's solicitors revealed that a Registrar's caveat had been entered on the land on 28 February 2014 by the Registrar on behalf of the Inland Revenue Board.

Feeling insecure over Datin Senah's character, Datin Jenab proceeded to the Registry of Land Titles to enter a lien-holder's caveat. However the Registrar refused to enter the caveat.

With reference to provisions of the National Land Code 1965 and decided cases, advise the parties on the following matters:

(a) Whether Datin Jenab has a right over the land as a lien-holder?

(10 marks)

(b) Whether Tan Sri Udin can apply for a cancellation of the Registrar's caveat over the land?

(10 marks)

(c) As between the parties, who has a priority over the land?

(5 marks)

(Total: 25 marks)

Continued...

QUESTION 4

(a) "... in the event of proceedings [order for sale] being brought under the Code [National Land Code 1965] to enforce a statutory charge over land, a chargor possesses certain valuable rights ..."

Kimlin Housing Development Sdn. Bhd. (Appointed receiver and manager) (In liquidation) v Bank Bumiputra (M) Bhd. & Ors [1997] 2 MLJ 805 SC at 818 (para B-C) per Edgar Joseph Jr FCJ

Based on the above statement, discuss any FIVE (5) valuable rights given to the chargor as laid down by the Supreme Court with reference to the National Land Code 1965 and cases, if any.

(10 marks)

(b) In 2015, Ali applied for a housing loan from Bing Bank Bhd. ('BBB'). As a security for the loan granted, Ali charged his double storey bungalow in Klang held under a land office title ('the land'). The charge was duly registered in favour of BBB as the chargee.

Recently, Ali decided to renovate his bungalow and applied for a loan from Money Bank Bhd. ('MBB') and as a security, Ali executed a charge document to charge the same property to MBB after receiving the requisite consent from BBB. MBB's solicitor presented the charge instrument at the Klang's land office for the registration and the loan was thereafter released by MBB to Ali. However, the registration process was suspended as the quit rent for the current year was not paid. The issue document of title and the charge instrument were returned to the solicitor.

Ali failed to pay his monthly installment for the loans to both BBB and MBB for the past six consecutive months. Advise the parties on the following matters:

(i) Ali received a notice of demand from MBB requesting him to pay the overdue monthly installment within 30 days from the date of the notice failing which MBB would apply for an order for sale. Ali seeks your explanation as to whether MBB has any interest over the land as the charge was not registered.

(10 marks)

Continued...

(ii) After taking all necessary steps under the law, BBB decided to apply for an order for sale of the land. However, the Land Administrator refused to grant the order for sale stating that there may be a mistake in the charge and ordered for an investigation to be conducted. BBB seeks your advice on whether the Land Administrator has the right to do so.

(5 marks)

(Total: 25 marks)

QUESTION 5

(a) Based on decided cases, examine the type of equitable principles applicable in lease transactions in Peninsular Malaysia.

(15 marks)

(b) Mimi agreed to buy a piece of land from Mama. Both Mimi and Mama appoint Mr. Ham Wong as the stakeholder and to facilitate the sale and purchase transaction. Advise both of them on the appointment, role and responsibilities of a stakeholder. Advise them also on the risk of liability in the event the stakeholder absconds with the purchase price.

(10 marks)

(Total: 25 marks)

End of Page